

## MDSU Trust Litigation Team Secures Trial Victory

McCollom D’Emilio Smith Uebler LLC attorneys Thomas A. Uebler, Jeremy J. Riley, Adam J. Waskie, and Terisa A. Shoremount achieved a trial victory for their longstanding trust client in the Delaware Court of Chancery. In *Sweeney v. Sweeney*,<sup>1</sup> two siblings, co-Trustees of their mother’s Trust, sued each other for breaches of fiduciary duties seeking damages and the removal of one another as a co-Trustee.

The Court best summarized the “dramatic” facts presented at trial:

A disinheritance. A pre-meditated break-in. A ransacked home. Covert surveillance operations. A family-farm-turned-hemp operation. Accusations of matricide. A gun collection. And gold and silver hidden in the rafters.<sup>2</sup>

In its post-trial memorandum opinion, the Court held that (1) the plaintiff/counterclaim defendant breached her fiduciary duties to the Trust; (2) MDSU’s client did not breach his fiduciary duties to the Trust; (3) the plaintiff/counterclaim defendant is removed as co-Trustee and the Trust is entitled to damages; and (4) MDSU’s client could recover his legal expenses, including his reasonable attorneys’ fees, from the Trust.

Three takeaways can be gleaned from the Court’s holdings to guide co-Trustees’ decisions. *First*, the Court found that the plaintiff/counterclaim defendant breached her fiduciary duties and MDSU’s client did not. The Court explained that MDSU’s client proved that the plaintiff/counterclaim defendant’s “actions were ‘not driven by the interest’ of the Trust.”<sup>3</sup> Rather, MDSU’s client proved that “his sister’s dragon sickness and related ill feelings toward him caused her to breach her fiduciary duties to the Trust.”<sup>4</sup> Examples of wrongful conduct included:

- breaking into a property in search of Trust property and then changing the locks;

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<sup>1</sup> C.A. No. 2022-0021-KSJM, 2024 WL 3040424 (Del. Ch. June 18, 2024).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> *Id.* at \*12.

<sup>4</sup> *Id.* at \*1.

- intentionally failing to send MDSU’s client checks to pay Trust expenses and failing to reimburse him for out-of-pocket costs;
- refusing to permit the logging, subdividing, and selling of parcels of the Trust property; and
- frustrating the sale of the Trust property.<sup>5</sup>

Trust counsel should advise clients that taking actions driven by animosity toward another co-Trustee, and not driven by the best interest of the Trust, could result in a breach of fiduciary duty.

**Second**, the Court removed plaintiff/counterclaim defendant as a co-Trustee and found that MDSU’s client would remain as the sole trustee to administer the rest of the Trust without interference. The removal of a co-Trustee is an “extreme” form of relief and the Court exercises its discretion “sparingly.”<sup>6</sup> When seeking to remove a co-Trustee for a breach of fiduciary duty, Trust counsel should look to this opinion for the facts and circumstances that warrant such removal.

**Third**, MDSU’s client could recover his legal expenses from the Trust, including his reasonable attorneys’ fees, that he incurred in prosecuting and defending the action. Trust counsel should consult 12 *Del. C.* § 3584 when seeking a fee award from a Trust.

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<sup>5</sup> *Id.* at \*12.

<sup>6</sup> *Id.* at \*13.